

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0066/P1dn
JTK&PJH:cjs:jf

March 28, 2011

Representative Pocan:

1. This draft provides that the act resulting from enactment of the draft applies initially to persons who are released on the day the act becomes law from imprisonment for crimes of which they claim to be innocent. If you would prefer a different initial applicability, please let me know.
2. You may wish to address the situation not covered by current law in which a person is imprisoned for more than one offense and is found to be innocent of one or more, but not all, of the offenses for which he or she was imprisoned.
3. You may wish to specifically address the situations, not addressed by current law, in which the claimant is given an award that the claimant believes is insufficient or that the claims board believes is incorrect or excessive and the claimant or the board wishes to contest some of the findings upon which the award is based or the correctness of the determination of the division of hearings and appeals.
4. Proposed s. 775.05 (4r) specifies that in hearings conducted by the division of hearings and appeals, the petitioner may be represented by counsel of his or her own choosing and DOA shall represent the state. An alternative would be to have DOC or DOJ represent the state. Please let me know if you would like to see this issue treated differently.
5. The instructions specify that there should be a time limit for transmittal of a newly filed claim to the other parties. Currently, the draft envisions only two parties to each case—the petitioner and DOA. If other entities are to be made parties or permitted to intervene, the draft needs to be changed. Currently, the prosecutor who prosecuted the petitioner and the judge who sentenced the petitioner, or their successors in office, must receive notice of any claim under s. 775.05 (2), stats. The draft specifies that the claims board shall provide this notice within five days after the filing of the petition. If you prefer a different time limit, please let me know.
6. The instructions also specify that there should be time limits for briefs and issuance of decisions. The draft specifies, in proposed s. 775.05 (4r), that the petitioner may submit a brief no later than 30 days after the filing of a petition and DOA may reply no later than 30 days after the date of filing of the petitioner's brief. The draft further provides that the hearing shall be held no later than 30 days after the date that the

petition is filed or the last brief is filed, whichever is later, and the hearing examiner must issue his or her decision no later than 60 days after the date that the hearing is held. If you prefer different time limits, please let me know.

7. Under this draft, expenses incurred by the division of hearings and appeals in deciding claims resulting from alleged wrongful imprisonment are paid from state general purpose revenue. Currently, the division's expenses are generally charged to the state agencies in which the cases heard by the division arise. If you want to see this issue treated differently, please let me know. If you concur with this alternative, you may need to include funding in the draft to ensure its implementation. This is because the current appropriation that finances the operations of the division of hearings and appeals [s. 20.505 (4) (f), stats.] is a sum certain and the current funding level does not include the cost of the administering the program created by this draft.

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Representative Pocan:

Please review this draft to ensure that it is consistent with your intent. Please let me know if you want changes to the three-month stipend that may be awarded under s. 808.085; my notes indicate that we had discussed, but not finally decided, how much money should be made available to exonerees.

Also, this draft does not specify whence the money for the stipend should come. We had discussed the possibility of funding the stipends from the appropriation under s. 20.505 (4) (d) or creating a new appropriation. Please let me know your thoughts on this for the next draft.

Please note that this draft requires the court, if requested, to seal all records related to an exonerated person's case. We had discussed the possibility of removing all references to the case from CCAP in addition to, or instead of, sealing the records. If you want me to add language related to CCAP, or replace the sealing requirement in the next draft, please let me know.

This draft requires the public defender to represent indigent people in s. 775.05 proceedings; please let me know if you also want state public defender representation for petitions under s. 808.085.

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